Amendments to the Drawings:

The attached sheets of drawings include changes to Figs. 13 and 14. These sheets including Figs. 13 and 14 replace the original sheets including Figs. 13 and 14.

Attachment: Replacement Sheets

REMARKS/ARGUMENTS

This Amendment is in response to the Office Action mailed August 23, 2006. In the Office Action, the drawings are objected to, claims 23-32 stand rejected under 35 U.S.C. § 101, and claims 1-32 stand rejected under 35 U.S.C. § 103.

Applicant has amended independent claims 1, 12, and 23 to clarify embodiments of the present invention.

Reconsideration in light of the amendments and remarks made herein is respectfully requested.

Drawings

The drawings are objected to because of informalities associated with Figures 13 and 14.

Applicant herein submits new drawings for Figures 13 and 14 as Replacement Sheets in accordance with 37 C.F.R. § 1.121 (d).

Applicant respectfully submits that the corrected drawings overcome the Examiner's objections. Applicant respectfully requests that the Examiner remove this ground for objection.

Rejection Under 35 U.S.C. § 101

The Examiner rejects claims 23-32 under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter.

Generally, a claimed process is statutory if it is limited to a practical application of an abstract idea or mathematical algorithm in the technological arts. See *Alappat*, 33 F.3d at 1543, 31 USPQ2d at 1556-57 (quoting *Diamond v. Diehr*, 450 U.S. at 192, 209 USPQ at 10). See also *Alappat* 33 F.3d at 1569, 31 USPQ2d at 1578-79 (Newman, J., concurring). A claim is limited to a practical application when the method, as claimed, produces a concrete, tangible and useful result; i.e., the method recites a step or act of producing something that is concrete, tangible and useful. See *AT&T*, 172 F.3d at 1358, 50 USPQ2d at 1452. See generally MPEP 2106.IV.

Additionally, the rules with respect to statutory subject matter have been revised as set forth in MPEP 8th Edition, Revision 5, August 2006. As set forth in MPEP 2106.01.I: "When a computer program is claimed in a process where the computer is executing the computer program's instruction, USPTO personnel should treat the claim as a process claim...When a computer program is recited in conjunction with a physical structure, such as computer memory, USPTO should treat the claim as a product claim." Both process claims and product claims are statutory subject matter as defined by 35 U.S.C. § 101.

Applicant respectfully submits that independent claim 23 directed to a machine-readable medium having instructions stored thereon which when executed by a processor, causes the processor to perform operations such as rating data files, storing data files, comparing rankings of data files, and displaying data files is clearly patentable subject matter in accordance with the revised MPEP standards (recited above).

Thus, Applicant respectfully submits that it is clear that Applicant's amended independent claim 23 should be considered to be statutory subject matter. Applicant respectfully requests that the Examiner remove this ground for rejection.

Rejection Under 35 U.S.C. § 103

Claims 1-32 stand rejected under 35 U.S.C. § 103(a) as being allegedly obvious over U.S. Pub. No. 2003/0093792 to Labeeb et al (hereinafter Labeeb), in view U.S. Patent No. 6,005,597 issued to of Barrett et al. (hereinafter Barrett).

Applicant respectfully submits that amended independent claims 1, 12, and 23 are not rendered obvious by Labeeb in view of Barrett because the combination of Labeeb and Barrett does not teach or suggest the limitations of Applicant's amended independent claims 1, 12, and 23.

As set forth in the Abstract of Labeeb, Labeeb is directed to: a method for displaying a TV program to a viewer including receiving a plurality of TV programs, allowing the viewer to select one of the plurality of received TV programs for viewing, and responding to viewer selection by controlling the programs displayed to the viewer in accordance with viewer

selection and with previously determined viewing preferences of the viewer...Controlling the programming displayed to the viewer may include displaying the viewer selected program and additional programs selected in accordance with the previously determined viewing preferences of the viewer...(Abstract of Labeeb).

Applicant respectfully submits that Labeeb does not teach or suggest Applicant's novel and non-obvious methodology for broadcasted data file selection as set forth in Applicant's amended independent claims 1, 12, and 23.

Particularly, Applicant respectfully submits that Labeeb does not teach or suggest: *rating previously broadcasted data files in response to a content rating data table...storing previously broadcasted data files meeting a pre-determined ranking threshold in a storage device to create a plurality of stored data files...comparing the rankings of the plurality of stored data files to determine a best stored data file...rating currently broadcasted data files in response to the content rating table...comparing the rankings of currently broadcasted data files to determine a best currently broadcasted data file...selecting the best currently broadcasted data file or best stored data file with the highest ranking...and... displaying the selected best currently broadcasted or best stored data file automatically on a personalized channel on the display device.*

This methodology as set forth in amended independent claims 1, 12, and 23 is quite simply not taught or suggested by Labeeb.

As set forth in Labeeb in paragraph 2, the invention relates generally to the storage and presentation of broadcast content, and more particularly, to the storage and presentation of broadcast content by intelligent preference determination agents.

In particular, as set forth in paragraph 49 of Labeeb and cited by the Examiner, Labeeb relates to a television control system 100 that operates in accordance with the principles of the present invention to cause recordation of television programs in response to user inputs 102 and television signals 104. As set forth in paragraphs 51 and 52 of Labeeb, as cited by the Examiner, Labeeb utilizes attribute information 107 and a recording manager 112 to cause recordation and

storage of television programs 105 and attribute information 107 in accordance with information generated by preference agent 110 which is stored in a preference database 116.

As noted by the Examiner, Labeeb does not disclose a content rating table that is utilized in rating broadcasted data file. Therefore, the Examiner combines Labeeb with Barrett, which is simply cited as it allegedly discloses a content rating table.

However, assuming *arguendo* that Barrett discloses a content rating table as set forth by the Examiner, the combination of Labeeb and Barrett still does not teach or suggest the limitations of Applicant's amended independent claims 1, 12, and 23 generally related to: *rating previously broadcasted data files in response to a content rating data table...storing previously broadcasted data files meeting a pre-determined ranking threshold in a storage device to create a plurality of stored data files...comparing the rankings of the plurality of stored data files to determine a best stored data file...rating currently broadcasted data files in response to the content rating table...comparing the rankings of currently broadcasted data files to determine a best currently broadcasted data file...selecting the best currently broadcasted data file or best stored data file with the highest ranking...and...displaying the selected best currently broadcasted or best stored data file automatically on a personalized channel on the display device.*

Therefore, Applicant respectfully submits that amended independent claims 1, 12, and 23 and the claims that depend therefrom are allowable over the prior art of record and should be passed to issuance.

Conclusion

In view of the remarks made above, it is respectfully submitted that pending claims 1, 7-12, 18-23, and 29-32 are in condition for allowance, and such action is earnestly solicited at the earliest possible date. The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application. To the extent necessary, a petition for an extension of time under 37 C.F.R. is hereby made. Please charge any shortage in fees in connection with the filing of this paper, including extension of time fees, to Deposit Account 02-2666 and please credit any excess fees to such account.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: 12/22/2006

By_____

Eric T King
Reg. No. 44,188
Tel.: (714) 557-3800 (Pacific Coast)

12400 Wilshire Boulevard, Seventh Floor
Los Angeles, California 90025

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12/22/2006

Nicole Erquiaga *Date*